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C O N F I D E N T I A L SECTION 01 OF 03 BAGHDAD 004237

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SUBJECT: CHALABI DISCUSSES DEBAATH LEGISLIATION WITH
AMBASSADOR; AGREES TO SOME COMPROMISES

Classified By: Ambassador Zalmay Khalilzad for reasons 1.4 (b) and (d).

11. (C) SUMMARY. Ahmed Chalabi, Commissioner of the Higher National De-Baathification Commission (HNDBC), met November 9 with the Ambassador, PolCouns and other Emboffs to discuss continuing concerns with the draft De-Baathification Reform legislation. The draft law's lack of transparency, continued focus on Baath party membership instead of criminal activity, increased scope, and lack of specificity on any other official of the Commission other than the Commissioner, an expiration date had been raised with Chalabi and in earlier emboff meetings with the HNDBC (reftel). Chalabi agreed to make a number of changes to the draft text, and post is reiterating our understanding of these agreed changes in a note memoir to Chalabi (see para 11). Chalabi also agreed on the importance of broad buy-in and the participation of Sunnis on the HNDBC. He defended the draft law's perpetuation of the Commission and its focus on membership as the necessary minimum required for Shia acceptance. Finally, Chalabi promised to reconsider provisions allowing the HNDBC to investigate members of Iraq's civil society organizations. When asked about moving some of the HNDBC's authorities to the judicial system, Chalabi stated the judicial system is too inefficient to appropriately investigate the cases. Chalabi hesitated when asked about including a tentative expiration date for the Commission, although he eventually agreed that a date could be included as long as the Commission could be extended if the Council of Representatives (CoR) agreed. END SUMMARY.

CLARIFYING THE DRAFT LEGISLATION: WHO IS AFFECTED?

12. (C) Chalabi began the meeting by clarifying the number of people who would be denied pensions, removed from their jobs or forced to request an exemption under the draft legislation. Chalabi stated that approximately 1,500 people representing the Baath party's top two levels (Regional Command and National Command) would be removed from their jobs without pension or right of reinstatement. Government employees with the rank of Branch member (Shu'aba) would also lose their jobs, although they would retain pension rights. This group was estimated to be approximately 7,000 people. Chalabi stated that the Group or Division members (Firqa) would also be removed from their positions but retain their pensions. Additionally this group, according to Chalabi, could appeal the de-Baathification order. If the appeal is granted the former Firqa member can return to government service, although they may not be a Director General or higher.

INCREASING TRANSPARENCY: DEFINING HOW THE APPEALS
PROCESS WORKS

13. (C) The Ambassador commented that the draft legislation lacks clarification as to how Commission processes operate, especially as it relates to the appeal process. Chalabi responded that there is a two-step process to appeal a de-Baathification order. Once the HNDBC makes a determination, the case is automatically reviewed by the Commission's Judges Office where at least three judges will review the cases, Chalabi said. Often times, according to Chalabi, these judges disagree with the initial finding and offer the individual an appeal.

14. (C) If, however, the HNDBC's Judges Office agrees with the HNDBC's initial finding, then the case can be taken to the courts where a final decision will be made. The second step, Chalabi said, occurs outside of the HNDBC and under the judicial system's authority. The Ambassador stated that the appeals process is not well-defined in the draft legislation, which makes the Commission's work appear non-transparent. Chalabi stated he has "no problem" explicitly outlining how to appeal a de-Baathification order. When Emboffs noted the draft legislation is also vague about the process for future proceedings, Chalabi agreed the law could include more specific language defining proceedings and safeguards.

CAN THE JUDICIAL SYSTEM PLAY A LARGER ROLE?

15. (C) Noting the role the courts play in the appeals process, the Ambassador wondered whether there are additional roles for the judicial system. The Ambassador stated that the HNDBC currently has three distinct missions: determine

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whether a former Baath party member has committed a crime against the Iraqi people; facilitate reconciliation; and ensure that the Baath party is not allowed to reemerge. Would it be more efficient, the Ambassador questioned, to refer potential criminal cases directly to the court system? Emboffs noted this would create uniform evidentiary standards, ensure due process, and address current criticism that the HNDBC is not transparent in their proceedings.

16. (C) Chalabi responded that the judicial system is too slow to process de-Baathification cases. Furthermore, while the courts review the case, the individual still receives a salary or a pension. The Shi'a community, especially the Sadrists, Chalabi warned, would not support former Baath party members continuing to receive salaries, especially if they are accused of more than just party membership. As it relates to transparency and accusations, the Commission operates in secrecy, Chalabi said; this is done to protect the accused individuals. They don't want their cases heard in open court, he continued. Furthermore, Chalabi explained that the Commission can prevent people from filing false claims for personal vendettas without exposing an accused individual to an open trial.

FINDING SUPPORT AMONG IRAQ'S SUNNI LEADERS

17. (C) The Ambassador stated that the draft legislation needs Sunni support and the HNDBC needs their participation. Chalabi emphatically agreed and stated that he has tried to get Sunni representation in the past, but has been unsuccessful. The Ambassador then stated that the draft legislation says the CoR will appoint the Commissioner. The law does not state who will appoint the rest of the Commission. Chalabi said, it was his intention that the CoR approve the entire Commission, not just the Commissioner, and agreed to specify that in the law.

18. (C) The Ambassador stated that if the CoR approves the

Commission, then they could also ensure Sunni participation. Chalabi agreed, but stated Sunni party leaders, instead of lower party members, will need to be on the Commission. Chalabi also agreed that the draft law could specify that the Commissioner's Deputy should be Sunni.

DEFINING A TIMELINE: HOW LONG WILL THE COMMISSION LAST?

¶9. (C) The Ambassador asked Chalabi how long the Commission will continue to exist. Chalabi replied that the Commission has a mandate to "complete its function," and at this point it has not finished its job. The Ambassador and PolCouns responded that it will be difficult for the Sunnis if the Commission is allowed to operate indefinitely. Would it be possible for the law to contain a clause that calls for the Commission to finish its functions within a set period of time, although this timeline can be extended if the CoR deems it necessary? Chalabi promised to consider this point, although warned that an expiration date might be controversial within the Shi'a parties.

EXPANDING THE COMMISSION'S SCOPE: WHY CIVIL SOCIETY?

¶10. (C) The Ambassador questioned why the draft legislation allows the Commission to investigate civil society organizations and the media. Chalabi replied that the HNDBC has always had this right, but they have rarely exercised it. The reasoning, he explained, is to prevent Baathists from taking control of the media and using it to promote the Baath party. The Ambassador replied that this is a dangerous precedent and could prove to be very divisive. Chalabi promised to investigate whether this clause could be removed from the draft legislation.

NOTE MEMOIRE PASSED TO CHALABI

¶11. (SBU) The following Note Memoire was passed to Chalabi:

- o Add language regarding full composition of the Commission, such as Commissioner, Deputy Commissioner and members of the Commission, defining how they are nominated and approved by the Council of Representatives (CoR) and their authorities and responsibilities. Make clear that

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members of the Commission and staff of the Commission should reflect the diversity of Iraqi society.

- o Add language defining when the mandate of the Commission will expire, for example at the conclusion of the current Council of Representatives' term, or a specific number of years, noting the Commission could be renewed by the CoR.

- o Define in the law the legal procedures and standards of evidence to be used in reference to applications to overturn previous findings of the Commission as well as in other portions of the law discussing activities and procedures of the Commission.

- o Define in the law the legal procedures and safeguards for individuals who are the subject to future proceedings.

- o Remove language from the draft law that extends the mandate of the Commission to civil society or the media.

- o Consider additional relaxation of application of the law to certain low-ranking members. For example, those who were at the Section (shu'aba) rank could be given automatically the right to their pension and the right to

apply for reinstatement; those at the Group (firqa) level who have received an exemption could be allowed to keep a government position below the Director General level.

Comment

¶12. (C) Although significant concerns about the draft de-Baathification legislation remain, this meeting produced some movement on key issues such as transparency and Sunni involvement within the Commission. Chalabi's willingness to define the appeals process, involve Sunni political leaders in the Commission's work, and consider limiting the HNDBC's reach within civil society organizations is a positive development. Post continues to engage Sunni, Kurdish and secular party representatives at the CoR on the issue of de-Baathification legislation.
Speckhard